App. F. IX-4

Previous References
Law 33-28 (1-3)

1928.29
Law

File No. 33-28
Serial Nos. 4

Later References
Mcy 28 S - 30 Sb 1-3
~~Doborn~~

General and Revenue Secretariat.

Serial Nos. One

Part B for Feb 31

SUBJECT.

Regular Appeal 77 28-29
(Yajman Doddi Venkataratnam
Lly vs Law Nizam Dept)

From the Govt Advocate

7/

Its copy of judgment
in the case

Rec'd 6/2/31

(1)

App. F. III—2]

General and Revenue Secretariat | File No. 33 of 1930

Serial No.	
1	Letter no 374 dated 9th Dec 1930 from Govt Advocate forwarding a copy of the Judgment in Regular appeal no. 7 of 1928-29 on the file of the H. Ct (Yajaman Doddi Venkatavatna Setty vs Secy to Govt Mysg Dept), where in the appeal was dismissed with Co (1) The plaintiff had filed an appeal against the decree passed by the Dist Judge B'lore dismissing his Suit under sec 11 of the Mysore Regn, for a declaration that he entitled to be the sole manager of the temple of Sree Venkataramanaswamy in nagarthpet Bangle by hereditary right; and also prayed for the Cancellation of the order of Govt entrusting the management of the temple to a Committee of Dharmadarsis. The learned judge of the H. Ct Confirmed the decree of the lower Court and dismissed the appeal with Costs, observing that there are no good reasons to interfere with discretion of the lower Court. (2) For perusal TSD 11/12 (3) Yajaman Doddi Venkataratna Setti filed a Suit (O.S. 27 of 26-27 in the Dt Ct, Blore) for declaration of his right to be the sole manager of Sri Venkataramanaswami temple, Nagarthpet, Bangalore & for Cancellation of Govt order appointing Dharma Darsis to the same —

NOTE—Contn. Sheet.

WD 02553—G PB—50,000—8 7 30

File No. 2934 of 193 | General and Revenue Secretariat

a) The Dist: Judge, dismissing the suit, he appealed to the High Court in R.A. 78 of 1928-29.

b) Copy of the judgments in appeal forwarded by the G.A. for perusal.

c) The learned Judges construe the Govt order as passed under sec 15 of the Rent Regn & hence hold that under sec 38 of that Regn the suit is not maintainable.

d) Particular reference is invited to portions marked in the judgment.

Legal[r].

BNG 12/1

(8) I am perusal
It is an interesting ruling
on the point.

D. Mr. 12/1

Ist Member

(9) As this does not
come up in appeal
on the lines side of
I
9/1/31

(10) For furnishing information
Rent Branch)

MM 10/1/31

BNG 10/1/31

(11) Vide G.O. No 248-50/Mis 375-25 dt 9-8-26 × B.

OFFICE OF THE FIRST MEMBER OF [illegible] COUNCIL
23 DEC. 1930
No. 6376

OFFICE OF THE THIRD MEMBER OF COUNCIL
9 JAN. 1931
No. 341/4

GENL. & REV. SECRETARIAT
12 JAN. 1931
977
MUZRAI.

12.1.31

App. F. III—21

General and Revenue Secretariat | File No. | of 193

Serial No.

7

Mem 292-26-1 [illegible] 80-2 Rev. Hyd. J

Contention of Mr Doddi Venkatanamma [illegible] that the management of the [illegible] always vest in a member of his [illegible] is stated to be maintainable a Committee of Dharmadarsi to the management of the estate has been vested to the appointed. When Mr Doddi Venkatanamma again petitioned to Govt for a review of their orders, he has in this Office letter No 616/Mem 80-26-2 dt 27.9.26 been informed that there is no reason for a reconsideration of orders passed by them.

[illegible] 12.1.31 H. Secy (12) VS 13.1.31

3rd member (13) 13.1.31

(14) 17/1

Refd files mentioned in para 11 are herewith [illegible] the desk return

Law Secy.)

17/1

Mem S.D. Thiswas to be [illegible] Please [illegible] Submit this [illegible]

NOTE—Contn. Sheet

12553—50,000—GPB—8-7 30

R

ISI 20/1

2934 9 P6 (3)

In reply please refer to
No. 874

Tel. Address
"JURIST," Bangalore.

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore... 8th December ..... *19* 30.

FROM

M. RAMACHANDRA RAO, ESQ., B.A., B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

To

The Secretary to the Government
of H. H. The Maharaja of Mysore,
Law Department, BANGALORE.

SIR,

With reference to your letter No. P.1796/Law. dated the 20th/24th September 1928, I have the honor to state that Regular Appeal No. 7 of 1928-29 on the file of the High Court of Mysore, (Yejaman Doddi Venkataratna Setty VERSUS The Secretary to Government, Muzrai Department, and others) came on for final orders on the 12th November 1930 and Judgment was pronounced dismissing the appeal with costs.

2. A copy of the Judgment is forwarded herewith, for the information of Government.

I have the honor to be,
Sir,
Your most obedient servant,

M. Ramachandra Rao

Government Advocate.

CSN.

4 554.

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Wednesday the 12th day of November 1930.

PRESENT

MR. JUSTICE D. K. RAMA RAO

and

MR. JUSTICE G. SREENIVASA IYER.

****

REGULAR APPEAL NO. 7 OF 1928 - 1929.

with memo of cross-objections.

Yajaman Doddi Venkata-ratna Setty. .. Plaintiff .. APPELLANT

- Vs. -

1. Secretary to the Government of His Highness the Maharaja of Mysore, -- Mustai Department, General and Revenue Secretariat, Bangalore.
2. B. Srinivasa Setty,
3. Shroff Gopala Setty,
4. Puttappa,
5. R. Chennabasava Setty,
6. B. Krishna Setty,
7. Venkatappa Setty,
8. H. Gopala Setty.

..Defendants..RESPONDE-DENTS.

Regular Appeal against the decree of the District Judge of Bangalore in Original Suit No.27 of 1926-27.

This

This reguler appeal coming on for hearing on -- Tuesday the 28th day of January 1930, the Court delivered the following:-

JUDGMENT.

52

Misappropriations involved in the withdrawals.

The agents had the right to appropriate sandal oil collections to the extent of the commission and expenses due to them but not more and under clause 6 of the agreement the balance of the collections should be remitted to the Government account without any delay and not less than once a week. The Rasenfleur Co's sandal oil account with Coutts & Co., is the account of total ~~total~~ sandal oil realisations made on behalf of the Government from this account which represents as I said the total sale proceeds the agents could draw only to the extent due to them, the balance being due to be remitted to the Government account every week. To the extent to which the agents draw in excess of the amounts due to them it is an overdraft on the sandal oil collections amounting to a ~~f~~ misappropriation . The witnesses who have been examined in this case to speak to the over drafts on the sandal oil collections have worked out these figures in their respective statements. They are all correct each from his point of view and they differ because certain items allowed in favor of the agents by one expert is disallowed by another. The reasons for the differences between their figures are clear and their figures are reconcilable with each other. In calculating the amount of dishonest misappropriation or utilisatio the principle of law is to allow to the accused the benefit of ~~bona~~ bona-fide claims whether the claims are substantiated or not. In these circumstances, I prefer to adopt as the figures of misappropriation on the several dates the figures worked out in Ext. C.6 according to the accounts maintained under the accused i.e. the Rasenfleur books up to the middle of the calendar year 1925 . Thereafter the figures as contained in the Rasenfleur books have to be modified to the extent to which deliberate suppressions are made in accounts with the knowledge or under the instructions of the accused These figures of overdraft in respect of individual withdrawals will be discussed in connection with the respective items.

Nature of evidence in the case.

Nature of evidence in the case.

The charge-sheet and the charge framed against the accused refer only to the items of utilisation of sandal oil monies between the 1st January and the 30th June 1926. In addition to the evidence to prove the utilisation of these moni during the period the prosecution has also addduced evidence to prove

(i) the systematic fraud throughout the period of agency according to a preconceived plan (Sec. 8. Evidence Act.)

(ii) the conspiracy for the utilisation of sandal oil moneys (&c).

(iii) transactions similar to those in issue in the charge shewing that the misappropriations of sandal oil monies in the charge form part of a series of similar acts and could not therefore be accident or mistake (Section 15 Evidence Act).

(iv) subsequent conduct of the accused influenced by by the dishonesty in respect of the misappropriations included in the charge such as suppression of the fraud, temporary recoupment of deficits and

(v) Confessions in confidential letters-

The following is a brief analysis of the nature of the evidence adduced through the several witnesses-

Witness.	Subjects included in his evidence
P.W.1.Mr.Narasinga Rao.,	the agency, conditions of agency returns received from agents, and correspondence relating to prices, credits and arrears and circumstances leading to the complaint.

R.A.No.7 of 1928-29.

Hr. Justice G. Sreenivasa Iyer.

JUDGMENT.

This is an appeal by the plaintiff from a decree passed by the District Judge of Bangalore dismissing his suit under Section 1 of the Mysore Regulation, for a declaration that he is, by hereditary right, entitled to the sole manager of the temple of Sri - Veerabramhaswamy, in Nagarthpet, Bangalore City and for the cancellation of the order of Government entrusting the management of the temple to a committee of Dharmadarsies. The plaintiff's case is that the temple was built by his ancestors, and that ever since its -- construction, it is being managed by the members of his family; but subsequent to his father's death in June 1922, the defendants 2,4,5 and 7 falsely stated in a petition under Section 8 of the Mysore Regulation VI of 1913 that the temple was mismanaged and its properties were misappropriated and prayed for the removal of the plaintiff from the management of the -- temple and for their own appointment in his place. The Hon Division Officer found that the alleged mismanagement and misappropriation were false and ordered that the plaintiff -- should be the sole manager. On appeal by the disappointed defendants, the Deputy Commissioner appointed a committee of advisers, but as both the parties were dissatisfied with that order they preferred an appeal to Government, and in their order dated 9-8-1926, Government directed that the management should be entrusted to a committee of Dharmadarsies. The plaintiff being dissatisfied with that order instituted

the

(7)

the suit under Section 14 of the Regulation.

The temple is a Nuzrai institution. The Secretary to the Government, Nuzrai Department, who was impleaded as the 1st defendant pleaded that the plaintiff's claim to the exclusive and sole management of a Nuzrai institution by hereditary right was untenable that the scheme ordered by the Government was equitable and that as the order related only to the appointment of Dharmakarsies, the suit was not cognisable by a Civil Court under Section 34 of the Regulation. The 6th defendant denied that the temple was built or managed only by the plaintiff's ancestors and pleaded that the members of his family being the Kuttiars of the community had also a right to manage the temple. Defendants 2, 3, 4, 5 and 7 denied that the temple was built by the plaintiff's ancestors or managed by them and pleaded the plaintiff had no right of hereditary or otherwise to be the sole manager of the temple and that the suit regarding the management of a Nuzrai institution was not cognisable by a Civil Court. The learned District Judge held that the plaintiff was not entitled to file the suit under Section 14 of the Regulation whether the order be considered to be or under Section 9 or 10 or 15 of the Regulation and dismissed the suit accordingly. The plaintiff has preferred this appeal against that decree.

The

8

The temple in question is admitted by the plaintiff to be a kuzrai institution as it is in receipt of an annual grant in perpetuity from the public revenues. Section 2 of the Kuzrai Institutions Regulation under shall mean and include:-

(i) "every temple, mosque, or other place of worship or religious service, any chatram or house of feeding or rest for travellers without charge, or other institution of a religious or charitable nature, which is now actually under the sole charge of Government, or for the support of which any annual grant in perpetuity is made from the public revenues, or an inam has been granted that is recognized and registered at the inam settlement as a devadayam or dharmadaya grant;

(ii) every institution of a religious or charitable nature which, under the provisions of this Regulation, has been taken under the sole management of Government, so long as it remains under such management." [Section 2 of the Regulation]

Any temple for the support of which no annual grant in perpetuity is made from the public revenues is a kuzrai institution under this Regulation. The temple in question gets an annual grant from the public revenues and is therefore clearly a kuzrai institution. The temple is open to all the members of the

Nagartha

(9)

Nagartha community though not to the public at large and is consequently a public one. (See 33 Cal.905 at 909 and 912).

From the copies of the orders filed in this Court by the learned counsel for the appellant, it is seen that the defendants 4,5 and 7 did not present any application specifically under section 3 of the Mysore Regulation and the application does not in terms purport to have been presented under that section. No specific act of mismanagement or misappropriation is alleged against the plaintiff or his ancestors, except vague allegation that the temple was being mismanaged by the plaintiff's father. The petitioners have prayed in that petition that they, who were the Kattis and Nejamans of the various sects among the Nagarthas should be appointed Dharmadarsis, and that as the plaintiff's father was also a manager for 17 years, ~~he~~ the plaintiff may also be appointed a Dharmadarsi along with them. After a formal -- enquiry, the Sub Division Officer found that the charge of mismanagement was not proved. This finding has not been upset by the order of the Deputy Commissioner or the Government. From the orders of the Deputy Commissioner and the Government and the pleadings in this case, it seems clear that the order was not passed by the Government under Section 9 of the Regulation. Section 3 of the Regulation provides that

> "When it is brought to the notice of the Amaldar officer that any religious

(60

or charitable institution dedicated for the benefit of the public or a defined section of the public or any property pertaining thereto is being grossly and persistently mismanaged. he may institute an enquiry into the truth of the allegations against the persons in possession and management of the property or the institution."

Section 9 provides that-

"If it is proved that there has been gross and persistent mismanagement of the institution or of any property pertaining thereto, or any misapplication or misappropriation of any part of the property, or any breach of trust in respect thereof; the Rural officer may order-

(1) that the institution may be taken under the management of Government;

(2) that the property which has been mismanaged or misappropriated may be delivered back either to the ij institution or to the possession of Government for the institution;

(3) that security may be given for the proper performance of the trust or management of the property;

(4) may frame a scheme for the proper management of the institution or management of its property and the application thereof; and

(5) pass such other ancillary or necessary orders as the case may require in accordance with justice and equity."

It is obvious from a perusal of these two sections that if it is proved that there

(11

s observed by ...Shambu-
hetty, C.J. in 13 ...
e mzrai officers that the
...agement ...control of
ll temples (private of
ublic)which enjoyed any
...am from Government
ither in land or money.
he history of the mzrai
nstitution set out in the
mzrai manual fully supports
nis view. The definition
f mzrai institution in
ection 2 also suggests
hat such institutions
re under the management
f Government. Section 9
hich empowers Government
o take ...mismanaged ins-
...itution under its manage-
ent ...not obviously
efer to a mzrai institu-
ution. Sections 8 & 9
mpower the Government
o assume the manage-
ent of institutions
olely on private charity
hen it is proved that
here has been gross and
ersistent mismanagement
of the institution or of
its property.

was gross and persistent mismanagement of a public religious institution or misappropriation of its property, the Mzrai -- officer can pass the orders specified in section 9. In the present case, no such specific allegations are made or prove the order of the Government produced in case does not purport to have been passed under Section 9 on the ground that there has been any gross and persistent mismanagement of the temple or misappropriation of its property or breach of trust in respect thereof. In fact no reference is made to Sections 8 and 9 in any of these orders. The fact that the petition was presented to the Amildar who is not a Mzrai officer -- under the Regulation, evidently shows that the parties did not proceed under Section 8 or 9 of the Regulation. Under the circumstances, it is unnecessary to consider in this case whether Sections 8 and 9 applicable to Mzrai Institutions or not though we are led to think on a careful consideration of all the provisions of the Regulation that Sections 8,9 and 10 do not apply to the case of Mzrai Institutions. Section 12 of the Regulation provides that any person against whom an order has been passed under Sections 9 and 10 directing dispossession or recovery of possession of property, may within six months from the date of such order file a suit in the court of the District Judge in whose jurisdiction the greater part of such property is situate

for cancellation of such order, making the Mukhtar officer one of the defendants. As the order in this case is not one passed under Sections 9 or 10, Section 12 does not apply, and the plaintiff is therefore not entitled to bring a suit under that Section.

But the order has the effect of dispossessing the plaintiff from the sole management of the institution. The plaintiff will no longer be the sole manager in possession of the temple or its property and the management is entrusted to a body of Dharmakarsies who will in future be in possession and the question is whether order is one that can be questioned in a Civil Court or whether it is one that cannot be entertained by the Civil Court. Section 38 provides that in all matters which a Mukhtar officer or Government has power to pass any order or to take any action, Civil Courts shall exercise jurisdiction only to the extent allowed by this Regulation. In other words, the Civil Court can exercise jurisdiction only to the extent expressly provided for in the Regulation. The only sections under which a Civil Court has jurisdiction are Sections 9 and 10, Section 12 and Section 23. Section 23 and Section 9 have no application to the facts of the present case. Admittedly no order directing dispossession has been passed under Sections 9 and 10.

Section 12.

section 12 has also no application.

The Government Advocate stated that the order was one passed under section 1 which empowers Government to appoint Dha darmics to manage the affairs of religio and charitable institutions or such ter and with such powers as may be prescribe The plea of the Government in written statement filed by the 1st def idant see kins to be the same. Section 15 is not expressly confined to Buzrai institution In fact, the expression is not found in the section. Whether section 15 applies only to Buzrai institutions or whether it applies to all religious and charitable institutions - Buzrai and non-Buzrai - is not very clear. No reference is made in the section itself to Buzrai institutions. The words used may include both Buzrai institutions and non-Buzrai institutions but if section 15 be interpreted as referring to non-Buzrai institutions, then it would empower Government to dispossess a trustee which they cannot do under section 9. Such construction would enable Government indirectly to take possession of any religious or charitable institution and the provisions of sections 3 to 9 would thus be rendered unnecessary. It is a well established rule of construction that statutes which encroach on the rights of a subject should be strictly construed and that they should be so construed so as to respect such rights from the Context and other provisions of the regulation, a limitation of the general -- expression.

14

expression - religious or charitable insti tution - must necessarily be implied. (See 24 Mad.471, 486). Sections 14,15,16 and 17 seem clearly to apply only to Mufrul Institutions. Section 15 of the Regulation empowers the Government to appoint Dharmadarsies to co-operate with and assis the Mufrul Officer who is the sole supervising and controlling authority of Mufrul Institutions and empowers the Government to frame the necessary rules in regard to their appointment and functions. Section 9 of the Regulation takes away the power of Civil Courts to entertain suits relating to the orders passed by the Government under Khalsa etc. In view of the position of the Government with reference to Mufrul Institutions, the reason for these provisions seem obvious. The plaintiff has therefore no right to call in question an order passed by Government under section 15 of the Regulation.

For these reasons we confirm the decree of the lower court and dismiss the appeal with costs. We see no good reasons for interfering with the discretion of the lower court in ~~awarding the costs~~ as regarding the costs. In this case also, we direct that there should be only one set of costs for ~~to all the defendants~~ defendants 1 to 4. The memo of cross objection is under the circumstances dismissed.

Sd/- G. Sreenivasa Rao

J U D G E.

~~J U D G E.~~

15

MR. JUSTICE D. K. RAMA RAO.

I agree. The case was argued at some length but no alternative seems possible since it is admitted that the subject matter relates to a Muzrai institution and as such is governed by the Regulation. No useful purpose will therefore be served by entering in this case into any detailed discussion of the principles involved in the definitions and their bearing on hereditary or other prior existing rights, as to which I reserve my opinion.

Sd/- D. K. Rama Rao
JUDGE.

"Copy"

TKV/b.

Misc. Assistant
for Registrar
15/

CRYSTALINFOSYSTEMS AND SERVICES

Bar Code

80722152

App. F. IX-4

✓

1926.

File No. 35-28

Previous References (Law)

Serial nos. 1–2

Later References
Law Dept 31-34
" 164-35-1-4.

P (5)

General and Revenue Secretariat.

Serial Nos. 2

Part B for Ret 1928

SUBJECT

Scale of fees to pleaders in Defence cases in Claim Cases in the Library &c/s.

2, To the Atlas Insurance Co
165 P 2018 4.10.28

State that in view of the absence of
legal encumbrances, it is not
desirable to commute the R/F & the
Exchequer shoulders additional expenditure

B.I. Agencies
8/11/28

Scale of fees to Pls &c
Claim cases &c

General and Revenue Secretariat. | File No. 35 of 1928

Serial No.

Letter No: 2862 dated 24 Sept
from Agent Mysore Railways
Scale of fees for legal advice
of Legal Affairs &c
under rule 62 (references &c
addressed to Pls &c only with regard
to pending Civil & Cr. Cases and Proceedings
which they are actually conducting or are
required to conduct in any Court. There is
no provision made in the rules for Consultation
or taking the opinion of the Pls in Claim Cases
I think such references are contemplated to
be made only to the L.R.

If however, the Pls may be consulted as
a special case, in Claim cases in the Rly: Dept,
the scale of fees proposed by the Agent seems
reasonable

Submitted for orders.

26.9.28

L.R.) 27/9

As the rules do not contemplate
the taking of opinion of P. Prs
as separate officers
by L. R. as appointed to
opinion it is not desirable
to refer cases for opinion
P. Prs which will be
involving expenditure
as is contemplated

Rly

WD.01714—GPB—35,000—12-28

General and Revenue Secretariat.

File No. 35 of 192 .

Serial No.	
	Draft put up Dorp 1.10.24

Note—Cancelled Sheet.

MYSORE RAILWAYS

1405
1924

All communications should be addressed to the Agent, Mysore Railways, Mysore, By TITLE, not by NAME

AGENT'S OFFICE,

Mysore, 24th September 1928.

No. 2862/Fl.

Enc.

From

THE AGENT,

Mysore Railways,

MYSORE.

2619

To

The Secretary
to the Government of Mysore,
Law Department,
Bangalore.

Sir,

Re. Scale of fees for legal advice.

With reference to G.O.No.P.4966-5045/Cts.76-23-1 dated 19th March 1924, passing orders laying down the procedure for the conduct of the legal affairs of Government, I have the honour to request you kindly to let me know the scale of fees that the Public Prosecutor is entitled to for consultation and legal advice, by this department in connection with Railway cases.

We have been paying him in the past Rs.16/- for every case sent up for legal advice but as most of our cases refer to claims under 50/-, it is rather hard to pay Rs.16/- in each case with the result that we have had to refrain from consulting him freely. On other Railways, a legal Advisor is permanently attached to claims office and attends to all cases which are likely to go to Courts but on a small Railway, it would be quite sufficient if there is some one who can be freely consulted. Instead of paying Public Prosecutor of Mysore who is always available to us, a retaining fee, I suggested to him @ the undermentioned scale of fees for ~~cases~~ Consultation and advice, subject to approval by Government and he is agreeable and the scale would also suit this department admirably.

Rs.5 for a case up to Rs.50/- in value
Rs.10/- for a case up to Rs.500/- in value
Rs.16/- for a case up to Rs.2,000/- in value, and
Rs.32/- for a case valued over Rs.2,000/-.

p.t.o.

Will you please favour me with your opinion in the matter before I submit the case to Government for orders.

I have the honour to be,

Sir,

Your most obedient servant,

Agent.

M.R.

24.9.28

A. P. F. VI. C''

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

Section

File No.

Serial No. 2

No. 2018

General and Revenue Secretariat

( )

the 192

To The Agent, Mysore Railways, Mysore

Date of issue 2/10/25

Signed by

Sir,

With reference to your letter No: 2862 dated 24/25 September 1928 regarding the Scale of fees to the Public Prosecutor for legal advice in Rs. cases, I am directed to state that as the rules framed for the conduct of Legal affairs of Government do not Contemplate taking Dep 15. the opinion of the Public Prosecutor and as a separate officer

List of enclosures.....

Copied by

Examined by

over

WD0925—GPB—50,000—26-5-27

viz the Legal Remembrancer is appointed for the purpose; it is not desirable to refer cases for the opinion of the Public Prosecutor. It will be an unauthorised expenditure if the Railway department incurs such expenditure as is contemplated in your letter under reply.

Thanks

for Secy to Govt
Law Dept

1.10.28